1949. File No. O. Prev. of Fragmentation /49

Legal Department

A BRANCH

Subject:— Opinions under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947

(P) (E)

File No. O. Pre. of Fragmentation 49 48D-A

3m. 204

C O N T E N T S.

Legal Department File No. 8 C.Prev. of Fragmentation/41

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JPR.6/6/56.
4 copies.

OFFICE OF THE R.L.A.

Whether "Consolidation Officers" can exercise the powers of "Revenue Officers" under Chapter X-A of the Bombay Land Revenu Code, 1879.

Section 26(2)(a) of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, does not empower a consolidation Officer to exercise the powers under Chapter X-A of the Bombay Land Revenue Code (cf.R.L.A's opinion No. 9792, dated 20/10/48). Consequently, the only feasible course to achieve the object is that the Consolidation Officers and Assistant Consolidation Officers should be appointed ex-office under the Bombay Land Revenue Code, "revenue Officers" of rank not lower than that of a Mamlatdar's first Karkun so that they can exercise the powers under section 135 D(6). The view taken by the Deputy ~~Secretary~~ Secretary, Revenue Department is correct.

Id/- P.M.L.
8/6/
Remembrancer of Legal Affairs.

U.R. to R.D. No.5410. dated the 8th June 1949.

JPS.8/6/56.
4 copies.

NOTIFICATION.

Revenue Department,

Bombay Castle, 1949.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act 1947.

No. .- In exercise of the powers conferred by clause (3) of section 2 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (Bom. LXII of 1947), the Government of Bombay is pleased to authrities the Assistant Consolidation officers specified in the Schedule hereto appended to perform the functions of the Consolidation Officer under section 26 of the said Act.

SCHEDULE.

1. Mr. M.M.Panchal.
2. Mr. M.V.Desai.
3. Mr. T.L.Desai.
4. Mr. M.P.Dixit.
5. Mr. B.G.Karathekar
6. Mr. J.B.Rane.
7. Mr. K.V.Patil.
8. Mr. T.S.Parab.

By order of the Governor of B'bay

Secretary to Government.

JPE.6/6/56.
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Section 26(1) of the Bombay Prevention of Fragment and Consolidation holdings Act, 1947, reads as follows

> "During the continuance of the consolidation proceedings the Consolidation Officer shall exercise and discharge the functions of a revenue officer under Chapter IX of the Bombay Land Revenue Code, 1879, the Mamlatdar's Courts Act, 1906, and the Bombay Tenancy Act, 1939; and no revenue officer other than the Consolidation Officer shall take any proceedings under any of the said Acts in respect of any holding or land for the consolidation of which a notification has been issued under Section 15."

The draft Circular says that the Consolidation Officer should take upon himself powers of deciding disputes or rights and settling them on the spot instead of referring them to the Mamlatdar concerned and as soon as this has been done in relation to the survey numbers which are affected by thex scheme, the Mamlatdars concerned should carry on the routine work normally to be done by them. The intention of this statement is not quite clear. Mamlatdars are precluded from dealing with any proceedings in respect of any holding or land for the consolidation of which a notification has been issued. There could thus be no question of referring any proceeding to them at any stage or of the Mamlatdar carrying out any part thereof. If by "routine work" is merely meant clerical or ministerial work, that need not be transferred to the Mamlatdar. The purpose can be well achieved by engaging the necessary clerical or minsterial staff under the Consolidation Officer or for group of Consolidation Officers, or even using the clerical staff of the Mamlatdars. If, on the other hand, by "routine work" is meant something which the Mamlatdar in his capacity as revenue officer has to perform under any of the Acts mentioned in sub-section (1), that would not be feasible in view of the clear prohibtion contained in the latter part of the sub-section.

2. The draft notification at page 23 , as slightly amended, is in order.

Id/- P.M.L.

Remembrancer of Legal Affairs.

U.R. to R.D. No.10801 dated the 26th Sept. 1949

JPE.6/6/56.4c.

OFFICE OF THE S.L.A.

Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. Sections 15, 19 and 20(1)

Bombay Prevention of Fragmentation and Consolidation of Holdings Rules, 1948. Rules 6 and 7

"When a public duty is imposed and the Statute requires that it shall be performed in a certain manner or within a certain time or under specified conditions to be directory in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative" (See Maxwell, 8th Edition, p. 322). Under section 15 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, a Consolidation Officer is required to prepare in the prescribed manner a scheme fortheconsolidation of holdings in such village or villages or part thereof as the case may be. Rule 6 of the Bombay prevention of Fragmentation and Consolidation of Holdings Rules, 1948, prescribed the manner of preparing a scheme for consolidation. Under that Rule theConsolidation Officer shall in consultation with the village Panchayat, if one exists, or with the Village Committee specially chosen forthis purpose by the Mamlatdar or Mahalkari, proceed to prepare a scheme for the consolidation of holdings. The particulars which a scheme should contain are specified in clause (i) to (ix). Clause (viii) requires a statement to be made showing the objections and suggestions in respect of the scheme made to the Consolidation Officer by the Village Panchayat or the Village Committee as the case may be which were not accepted by him together with the reasons forwhich they have been overruled by him. Under Rule 7 publication of the draft scheme is required to be announced in the village calling for objections, if any, to be sumitted to the Consolidation Officer within 30 days

Section 20(1) provides thatif within 30 days of its publication no objections are received to the Draft Scheme published under sub-section (1) or the amended draft scheme published under sub-section (2) of the section 19, as the case may be, the Settlement Commissioner shall confirm the scheme. It is clear from these provisions that the consultation with the Village Panchayat or the Village Committee is in the nature of an advice sought from them and notwithstanding any such consultation, the persons affected by the scheme are still given an opportunity to raise their objections, if any. Consequently, the failure to consult the Village Panchayat or the Village Committee would not materially affect or prejudice the rights of the perople whose holdings are consolidated or in any way affected by the scheme. Village committees were formed in the present case by the Hamlatdar or Mahalkari for consultation. Since those committees refused to act, the question of consultation with such committees would be impossible and at the same time the absence of such consultation with the Village panchayats or Village Committees specially chose for this purpose would be considered as directory and there would be no legal objection to proceeding with the preparation of the scheme in cases where the village committees have refused to co-operate with the Consolidation Officer. The view taken by the Settlement Commissioner in his letter at page 1 ante is correct.

Id/- P.M.L.
15/12
Remembrancer of Legal Affairs

U.R. to R.D.,No.14598, dated the 15th December 1949.

JPM.6/6/56.4c.